

AMENDED IN ASSEMBLY APRIL 26, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 363

Introduced by Assembly Member Steinberg
(Coauthors: Assembly Members Aroner, Diaz, Koretz, and
Washington)
(Coauthors: Senators Escutia, Kuehl, and Romero)

February 20, 2001

An act to add Section 6068.5 to the Business and Professions Code, relating to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

AB 363, as amended, Steinberg. Attorneys.

~~The Existing law, the State Bar Act specifies the duties of an attorney that include, among others, provides that the State Bar is governed by the Board of Governors that is authorized to formulate rules of professional conduct for persons licensed to practice law in this state. Under existing law, the rules recognize that those persons are also subject to other laws regulating the conduct of attorneys, including the obligation under the State Bar Act to maintain the confidentiality of information disclosed to him or her by a client.~~

This bill would enact the Public Agency Attorney Accountability Act. The bill would ~~authorize an attorney employed by a state or federal government agency to report information that he or she reasonably believes is necessary to prevent a government official or agency from engaging in improper governmental activity, as defined, or to rectify the consequences of that activity make a finding and declaration by the Legislature of the competing obligations of public agency attorneys to~~

protect the interests of the public and to protect the confidences of their client and that a rule of professional conduct be adopted on or before January 31, 2002, to clarify the circumstances under which public agency attorneys may act to protect the public interest when that conduct may disclose client confidences.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Public Agency Attorney Accountability Act.
- 3 ~~SEC. 2. The Legislature finds and declares that an attorney~~
- 4 ~~employed by a government agency owes a duty to protect the~~
- 5 ~~public.~~
- 6 ~~SEC. 3.~~
- 7 SEC. 2. Section 6068.5 is added to the Business and
- 8 Professions Code, to read:
- 9 ~~6068.5. (a) Notwithstanding subdivision (e) of Section 6068,~~
- 10 ~~an attorney employed by a government agency may report~~
- 11 ~~information relating to the representation of that agency to the~~
- 12 ~~extent the attorney reasonably believes that it is necessary to~~
- 13 ~~prevent a government official or government agency from~~
- 14 ~~engaging in improper governmental activity, or to rectify the~~
- 15 ~~consequences of a government official's or government agency's~~
- 16 ~~improper governmental activity.~~
- 17 (b) As used in this section the following definitions apply:
- 18 (1) ~~"Government agency" includes a political subdivision,~~
- 19 ~~branch, bureau, or instrumentality of the state or federal~~
- 20 ~~government.~~
- 21 (2) ~~"Improper governmental activity" shall have the meaning~~
- 22 ~~set forth in subdivision (b) of Section 8547.2 of the Government~~
- 23 ~~Code.~~
- 24 6068.5. (a) *The Legislature hereby declares that the Rules of*
- 25 *Professional Conduct adopted by the Board of Governors of the*
- 26 *State Bar appropriately reference the importance in our justice*
- 27 *system of protecting attorney-client confidential communications.*
- 28 *However, these rules do not yet adequately acknowledge some*
- 29 *important differences that exist between the duties of public*
- 30 *agency attorneys and private sector attorneys. Unlike private*

1 *sector attorneys, public attorneys owe a duty not only to their*
2 *public agency clients but also to the public at large.*

3 *(b) The Legislature further finds and declares that the*
4 *competing obligations of public agency attorneys to protect the*
5 *interests of the public and to protect the confidences of their public*
6 *agency client may occasionally conflict. There is growing*
7 *consensus in the legal community and the State Bar that the current*
8 *Rules of Professional Conduct do not provide adequate guidance*
9 *and clarity for public agency attorneys reasonably to determine*
10 *the circumstances under which they may properly seek to protect*
11 *the public interest even at the risk of disclosing client confidences.*

12 *(c) The Legislature finds and declares that there are*
13 *circumstances under which a public attorney should be free to*
14 *protect the public interest even if that means disclosing*
15 *attorney-client confidences. The Legislature therefore finds and*
16 *declares that the Rules of Professional Conduct should be*
17 *amended to clarify the right of public agency attorneys to strive to*
18 *protect the interests of the public under appropriately specified*
19 *circumstances even when that protection may unavoidably risk the*
20 *disclosure of client confidences. Every public agency attorney in*
21 *the state who is a member of the State Bar, whether employed on*
22 *the local, state, or federal level, should be provided adequate*
23 *guidance to reasonably determine the circumstances under which*
24 *he or she may properly seek to protect the public interest even at*
25 *the risk of disclosing client confidences, through the adoption, on*
26 *or before January 31, 2002, of a carefully balanced new rule of*
27 *professional conduct.*

